



June 2021

Annex I - DuckDuckGo's proposed DMA amendments

Article 6.1(bb) - new	
<i>European Commission's proposal</i>	<i>Amendment</i>
(new)	<i>(bb) refrain from securing or establishing default positions for the online search engines of the gatekeeper across the search access points of the operating systems owned by any gatekeeper.</i>
<i>Justification</i>	
This article would prevent search gatekeepers from securing default positions across the search access points of a gatekeeping operating system.	

Recital (46a) - new	
<i>European Commission's proposal</i>	<i>Amendment</i>
(new)	<i>(46a) Securing or establishing default positions across the search access points of an operating system, such as the pre-installed browser or another, dominant browser, the home screen bar widget, or the voice assistant, can entrench the dominant position of an established online search engine and prevent contestability on the online search engine market. Even where users can change the default manually, they rarely do so, due to behavioral bias for inertia. In order to ensure contestability, end users should be able to select their preferred online search engine default through a preference menu when they set up their device. The preference menu should</i>

	<i>comprise the most popular online search engines on a given market, on the basis of objective criteria such as market share, and should be designed in a fair and non-discriminatory manner to ensure that end users are not nudged to select a particular provider. The preference menu should be effective, that is the end user's choice of a search engine default should immediately apply across the search access points of the operating system. End users must subsequently be able to access such preference menu after the device is set up, including through a prompt on another online search engine's website or software application.</i>
Justification	
This is the corresponding recital to article 6.1(bb) (new). It would prevent search gatekeepers from securing default positions across the search access points of an operating system, and would introduce a preference menu presented during device activation and available after.	

Recital (41)¹	
<i>European Commission's proposal</i>	<i>Amendment</i>
(41) Gatekeepers should not restrict the free choice of end users by technically preventing switching between or subscription to different software applications and services. Gatekeepers should therefore ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of	(41) Gatekeepers should not restrict the free choice of end users by technically preventing switching between or subscription to different software applications and services. <i>Restricting the users' ability to switch applications or services preset as default is a barrier to switching.</i> Gatekeepers should

¹ Since recital (50) is a duplicate, it can also alternatively be amended along the same line.



<p>which such software applications or services are accessed and should not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to end users, including by means of pre-installation, as well the improvement of end user offering, such as better prices or increased quality, would not in itself constitute a barrier to switching.</p>	<p>therefore ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and should not raise artificial technical barriers so as to make switching impossible, difficult, or ineffective. The mere offering of a given product or service to end users, including by means of pre-installation, as well the improvement of end user offering, such as better prices or increased quality, would not in itself constitute a barrier to switching.</p>
<p><i>Justification</i></p>	
<p>This recital comes in support of article 6.1(e) on switching, specifying that restricting the user's ability to switch default settings is a restriction to the free choice of end users.</p>	

Recital (51)	
<i>European Commission's proposal</i>	<i>Amendment</i>
<p>(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different Internet access service providers, in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that</p>	<p>(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch the online search engine default, or between different Internet access service providers, in particular through their control over operating systems or hardware. This distorts the level playing field for online search engines and Internet access services</p>



gatekeepers do not unduly restrict end users in choosing their Internet access service provider.	and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing their Internet access service provider, <i>or the default online search engine across the search access points of their operating system.</i>
<i>Justification</i>	
This amendment specifies that restricting the ability to switch online search engine defaults harms the users' right to access an open Internet.	

Article 6.1(b)	
<i>European Commission's proposal</i>	<i>Amendment</i>
(b) allow end users to un-install any pre-installed software applications on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;	(b) allow end users to un-install any pre-installed software applications, <i>or switch the default for any other service</i> on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation <i>or default switching</i> in relation to software applications <i>or services</i> that are essential for the functioning of the <i>core platform service, the</i> operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;
<i>Justification</i>	
This amendment aims at ensuring users are not barred from changing default settings.	



Recital (46)	
<i>European Commission's proposal</i>	<i>Amendment</i>
(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its core platform service and thereby favour their own software applications;	(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper, <i>or when they are preset as default on a core platform service.</i> To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications, <i>or change default services</i> on its core platform service and thereby favour their own software applications <i>or services</i> ;
<i>Justification</i>	
This amendment aims at ensuring users are not barred from changing default settings, corresponding to the revised article 6.1(b).	

Recital (56)	
<i>European Commission's proposal</i>	<i>Amendment</i>
(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of	(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of



<p>online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate means, without substantially degrading the quality or usefulness of the data.</p>	<p>online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. <i>Additionally, the current contractual arrangements in search syndication agreements may limit the downstream provider's access to click-and-query data.</i> Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. <i>The Commission shall encourage search engines to establish a technical architecture enabling the transfer of such data, and ensure that contractual arrangements, for instance in search syndication agreements, do not constitute barriers to effectively accessing click-and-query data.</i> When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate</p>
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	means, without substantially degrading the quality or usefulness of the data.
<i>Justification</i>	
The 6.1(j) provision on click-and-query data can be instrumental in opening up the search market. But because it would be such a complex endeavor, recital (56) should clarify that this would require the technical cooperation of industry players and the involvement of the regulator, which might need to look into syndication contracts and potentially reject non-satisfactory schemes.	

Article 7.2	
<i>European Commission's proposal</i>	<i>Amendment</i>
2.Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.	2.Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 5 and in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.
<i>Justification</i>	
The Commission should also be able to easily impose remedies for article 5 obligations without the need to first make three non-compliance decisions.	



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